HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1136/2001
(old no. 3043/1983)

Maqbool Ahmed and Smt. Memana Begum ……..Appellants
Vs.
State of U.P. ……Respondent

Hon'ble Irshad Hussain, J.

Sri R.S.Sammal learned counsel for the appellants and Sri H.C.Pandey learned A.G.A. for the State and perused the record.

This criminal appeal was preferred against the judgment and order dated 25.11.1983 passed by the Ist Addl. Sessions Judge, Nainital in sessions trial no.75/1982, convicting and sentencing the appellant-Maqbool Ahmed to undergo RI for one year under section 324 IPC & RI for three months under section 323/34 IPC and his wife-Smt. Memana Begum to undergo RI for three months under section 323 IPC & RI for one year under section 324/34 IPC. Both the sentence of imprisonment of the appellants were directed to run concurrently.

Learned counsel for the appellant has not challenged the finding of conviction of the two appellants but had confined his argument only on the point of sentence by convassing that the incident took place when on a trifling matter of quarrel took place among the children of the appellants and the complainant-Mohd. Ishaq and further that simple injuries were sustained by the said victim. Learned counsel also argued that the appellants were convicted for bailable offences and since the incident took place more that 20 years ago, the sentence of imprisonment is not required to be maintained and instead by taking a liberal view the sentence of imprisonment may be set-aside and if necessary, sentence of fine may be imposed against the appellants.

Having considered the above aspects of the case particularly the fact that incident took place more than 20 years ago, no useful purpose will be served to send the appellants to jail to serve out the sentence. The ends of justice will be justified if suitable modification in the sentence is made and the appellants are sentenced to pay a reasonable fine. It is also of significance that although the complainant sustained injuries he was not awarded any compensation and therefore the sentence of fine if imposed suitable compensation may also be provided to the injured.

For the reasons aforesaid, the appeal is partly allowed. Conviction of the appellants-Maqbool Ahmed and Smt. Memana Begum is maintained. The sentence of imprisonment is modified to the sentence of imprisonment already undergone and to pay fine of Rs. 1000/- (Rupees one thousand only) each under section 324 & 323/34 IPC and under section 323 & 324/34 respectively. Out of which the fine, if released Rs. 1000/- (Rs one thousand only) shall be paid to Mohd. Ishaq as compensation. In default of payment of fine the appellants shall undergo R.I. for three months.

Let the record be sent back to the Sessions Judge, Nainital for necessary compliance and report to be submitted within one month.

(Irshad Hussain, J.)

Dated 24.4.2004

Rawat